AGREEMENT CITY OF FRESNO, CALIFORNIA

THIS AGREEMENT is made and entered into effective the day of 2010, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and CROSSROADS SOFTWARE, INC. (hereinafter referred to as "CROSSROADS").

NOW THEREFORE, in consideration of the covenants, conditions, and promises contained herein, the parties agree as follows:

General Definitions and Terms

CROSSROADS Responsibilities

- 1. CROSSROADS will host a secure website for dissemination of traffic collision reports to insurance companies, involved parties, and other entities as permitted pursuant to Vehicle Code Section 20012 and other applicable laws.
- 2. CROSSROADS will manage a secure dedicated server hosted at an established data center with VPN management access. The server facility provides usage monitoring, firewall technology, strict password rules, tracking of failed login attempts, and encrypted data service with 128 bit SSL security.
- 3. CROSSROADS will process requests received by mail for collision reports, as well as download requests from the secure website.
- 4. CROSSROADS will provide in-house resources to handle questions regarding access to collision reports on a timely basis.
- 5. As directed by CITY and/or required by law, CROSSROADS will redact event fields associated with confidential information.
- 6. CROSSROADS will provide accounting statements detailing the collision dissemination transaction each month showing how many collision reports are being obtained online or disseminated through CROSSROADS, and related charges, and retained such for 3 (three) years.
- 7. CROSSROADS agrees that CITY or their designated representatives shall have the right to review and to copy any accounting and banking records and supporting documentation pertaining to the performance of this Agreement. CROSSROADS agrees to allow the auditor(s) access to such records during normal business hours.
- 8. CROSSROADS will provide CITY access to the Ecommerce website for administrative purposes and for collision lookup and access by authorized CITY personnel.
- 9. CROSSROADS will arrange to acquire any hard copy collision reports on a daily basis (weekdays) at CITY Police Department that are not being produced electronically using CROSSROADS Collision Database System.
- 10. CROSSROADS will execute data entry for all hard copy collision reports that are not being produced in electronic format. CROSSROADS will input scene information, conditions information, involved party and passenger information and all relevant fields needed for executing quality analysis of collision events and for indexing collision

- reports for use in the Ecommerce website. The data will be provided back to CITY Police Department ``for use in the analysis package on daily basis."
- 11. CROSSROADS will provide a no fee site license for the Collision Database System and will provide ongoing maintenance and support for the CROSSROADS Collision Database System including updates to the most current versions as they become available. CROSSROADS will execute the Street Name Verification and Geocoding of CITY's collision records and provide the updated information to the CITY Police Department for use in their analysis functions in the CROSSROADS Collision Database System.
- 12. CROSSROADS will provide a site license for the Handheld Collision Reporting and Handheld Citation Module to CITY Police Department, and provide a training session in the use of the system, all at no cost to CITY.
- 13. CROSSROADS will provide ongoing maintenance and support for the CROSSROADS Collision Database System including updates to the most current versions as they become available. CROSSROADS will execute the Street Name Verification and Geocoding of CITY's collision records and provide the updated information to CITY Police Department for use in their analysis functions in CROSSROADS Collision Database System, all at no cost to CITY.
- 14. CROSSROADS will provide ongoing maintenance and support of the handheld report writing system (including both CROSSROADS Handheld Citation System and the Handheld Collision Reporting Module). CROSSROADS will provide updates to current versions as they become available, all at no cost to CITY.
- 15. In consideration of the services provided by CROSSROADS, CROSSROADS may charge a convenience fee of \$12.00 (paid by the requestor) for each report disseminated by CROSSROADS. The requestors will be made aware of their ability to obtain the collision report at CITY Police Department pursuant to the Public Records Act (Gov. Code §§ 6250 et seq.), before proceeding with payment of the convenience fee.
- 16. Nothing in this Agreement prevents CITY Police Department or its employees from conforming to the requirements of the Public Records Act.

CITY Responsibilities

- 1. CITY Police Department will make hard copy collision reports available to CROSSROADS as they are approved on a daily basis (weekdays) for those reports not being produced in the CROSSROADS collision report modules.
- 2. CITY Police Department will provide an electronic transfer for those collision records that are produced digitally.
- 3. CITY acknowledges that CROSSROADS may provide images of the traffic collision reports to those individuals and entities legally entitled to receive the contents of the collision reports as permitted by law.
- 4. CITY agrees to allow CROSSROADS to share VIN and other crash data with CROSSROADS' partner—CARFAX. No personal, private or confidential information concerning drivers, passengers, owners, witnesses or other involved parties will be shared with CARFAX®. This is vehicle only VIN-level data that assists CARFAX® with their law enforcement and consumer services programs, and provides the users of those services with timely and accurate information about a vehicle. CARFAX® will provide

Fresno with a courtesy account, which allows CITY to obtain free vehicle history reports from CARFAX® for use in CITY's vehicle theft and fraud investigations

Maintenance

1. CROSSROADS will maintain the secure website for dissemination of collision reports, and will provide ongoing maintenance and support for the software provided to CITY for use in creating collision reports, and for executing collision analysis, all at no cost to CITY.

Failure to Perform

1. There will be no liability to either party for a force majure situation.

Compliance with Law

1. In providing the services hereunder CROSSROADS shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Agreement.

Warranty and Non-Infringement

CROSSROADS warrants that it has good title to the software and website(s) hereunder, free of any proprietary rights of any other party or any other encumbrance whatsoever, or the right to license its use to the CITY. CROSSROADS further warrants the software and website(s) hereunder are free from trade secret, trademark, copyright and patent infingements. CROSSROADS shall indemnify, hold harmless, and defend CITY and each of its officers, officials, employees, agents and volunteers at CROSSROAD'S sole cost and expense from and against all claims arising from all suits of law or actions of every nature for or on account of the infringement of trade secret, patent, trademark, copyright, title or other proprietary rights by reason of the use of the software and website(s) hereunder. This section shall survive expiration or termination of this Agreement.

Indemnification

1. To the furthest extent allowed by law and without limiting the foregoing, CROSSROADS shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the

negligence, recklessness or willful misconduct of CROSSROADS, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CROSSROADS should subcontract all or any portion of the services to be performed under this Agreement, CROSSROADS shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

Insurance

Throughout the life of this Agreement, CROSSROADS shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

If at any time during the life of the Agreement or any extension, CROSSROADS or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CROSSROADS of its responsibilities under this Agreement.

The fact that insurance is obtained by CROSSROADS shall not be deemed to release or diminish the liability of CROSSROADS, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CROSSROADS. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CROSSROADS, its principals, officers, agents, employees, persons under the supervision of CROSSROADS, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of CITY, CROSSROADS shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If CROSSROADS should subcontract all or any portion of the services to be performed under this Agreement, CROSSROADS shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with

CROSSROADS and CITY prior to the commencement of any services by the subcontractor.

Independent Contractor

- 1. In the furnishing of the services provided for herein, CROSSROADS is acting solely as an independent contractor. Neither CROSSROADS, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CROSSROADS shall perform hereunder. However, CITY shall retain the right to administer this Agreement so as to verify that CROSSROADS is performing its obligations in accordance with the terms and conditions thereof.
- 2. This Agreement does not evidence a partnership or joint venture between CROSSROADS and CITY. CROSSROADS shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CROSSROADS shall bear its own costs and expenses in pursuit thereof.

Attorney's Fees

1. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

Term of Agreement

1. The term of this Agreement will automatically renew each year from the effective date of this Agreement, unless terminated by the parties.

Termination

1. This Agreement may be terminated by either party at any time with 30 days written notice. During the 30 day period, CROSSROADS will continue to perform services in accordance with this Agreement.

Ownership of Documents

1. All reports, records, and documents maintained by CROSSROADS relating to this Agreement, other than materials containing CROSSROADS' proprietary information or property shall immediately be delivered to CITY by CROSSROADS upon termination or expiration of the Agreement.

Notices

All Notices shall be made in writing and shall be sent by personal delivery, first class mail, return receipt requested, overnight express, or facsimile. Notices may be sent to the following addresses:

CITY:

Fresno Police Department

Attention: Chief of Police 2326 Fresno St

Fresno, CA 93721

CROSSROADS: Crossroads Software, Inc.

Attention: Jeff Cullen 210 W. Birch St. #207

Brea, CA 92821

Entire Agreement

This agreement shall constitute the entire understanding between CITY and CROSSROADS relating to the terms and conditions of the services to be performed by CROSSROADS.

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Attachment: Exhibit B

TY:sah [54701sah/ty] 12/02/10

Exhibit B

INSURANCE REQUIREMENTS Agreement between City of Fresno and Crossroads Software, Inc.

On-line Dissemination of Collision Reports

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
- 2. CYBER LIABILITY insurance.
- 3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

CROSSROADS shall maintain limits of liability of not less than:

- 1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$1,000,000 aggregate for products and completed operations
 - \$1,000,000 general aggregate
- 2. Cyber Liability:
 - \$1,000,000 per claim/occurrence
 - \$2,000,000 policy aggregate
- 3. Employer's Liability:
 - \$500,000 each accident for bodily injury
 - \$500,000 disease each employee
 - \$500,000 disease policy limit

Umbrella or Excess Insurance

In the event CROSSROADS purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CROSSROADS shall be responsible for payment of any deductibles contained in any insurance polices required hereunder and CROSSROADS shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) CROSSROADS shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Cyber Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
- 2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
- 3. CROSSROADS'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CROSSROADS and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Cyber Liability insurance policy is written on a claims-made form:

- 1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CROSSROADS.
- 2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

- 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CROSSROADS must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
- 4. A copy of the claims reporting requirements must be submitted to CITY for review.
- 5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CROSSROADS shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CROSSROADS shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

Verification of Coverage

CROSSROADS shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.

AGENDA ITEM NO. | D

COUNCIL MEETING 12/16/10

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 16, 2010

FROM:

JERRY P. DYER, Chief of Police

Police Department

BY:

ANDY HALL, Captain

Police Department

SUBJECT:

AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO AND EXECUTE AN AGREEMENT

WITH CROSSROADS SOFTWARE, INC. TO PROVIDE ELECTRONIC TRAFFIC CITATION

SOFTWARE AND ON-LINE DISSEMINATION OF COLLISION REPORTS

RECOMMENDATIONS

It is recommended that Council authorize the Chief of Police to enter into and execute an agreement with Crossroads Software, Inc. to provide electronic traffic citation software and on-line dissemination of collision reports.

EXECUTIVE SUMMARY

The City of Fresno was awarded grant funds of \$806,000 from the California Office of Traffic Safety to undertake the DUI Enforcement and Awareness Program (DEAP) grant project and implement an electronic traffic citation system. The award was previously approved by Council in August 2010 and appropriations were authorized at that time. Staff returns to Council for authorization to enter into an agreement with Crossroads Software, Inc. for the use of their software at no cost to the City. In return, Crossroads Software, Inc. will be allowed to distribute Fresno Police Department collision reports on-line for a \$12 convenience fee. Council approval is needed to authorize this agreement.

BACKGROUND

A portion of the DEAP Grant funds, \$300,000, was specifically allocated by the California Office of Traffic Safety for the Fresno Police Department to implement an automated electronic traffic citation system. The Police Department is using this funding to purchase eighty (80) automated citation devices and associated hardware. The agreement with Crossroads Software, Inc. allows the Department to acquire the software necessary to write electronic citations at no cost. Additionally, Crossroads Software, Inc. will provide collision reporting software, collision and citation analysis software, and data entry into the collision database at no cost. This collision analysis database will be used by the Police Department and Traffic Engineering, eliminating the need for in-house data entry. This critical data entry was discontinued by the Police Department during recent budget cuts and subsequent personnel reductions. The Crossroads Software, Inc. agreement also includes regular software updates and maintenance at no cost. In return, for the use of their software, Crossroads Software, Inc. will be allowed to distribute Fresno Police Department

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Report to Council DEAP Grant December 16, 2010 Page 2

collision reports on-line for a \$12 convenience fee. This will allow citizens to avoid the long wait times at the Police Department to obtain a copy of their collision report. However, should citizens want to obtain a free copy of their collision report, they will be able to obtain a copy at the Police Department in accordance with the Public Records Act.

FISCAL IMPACT

There is no impact to the general fund.

AH:RT:vrg 12/07//10

Attachment: Agreement